

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 3330 OF 1981

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be
allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the
fair copy of the Order ?

4. Whether this case involves a substantial
question of law as to the interpretation of
the Constitution of India, 1950 of any Order
made thereunder?

5. Whether it is to be circulated to the Civil
Judge?

CHANDRAMURTHI S BAXI
VERSUS

STATE OF GUJARAT

Appearance:

MR PV HATHI for the Petitioner

MS MANISHA LAVKUMAR AGP for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 11/08/2000

#. The petitioner, since retired, a Government servant, praying in this petition for quashing and setting the seniority list, last being issued on 17.6.1980 so far as it relates to the petitioner. Second prayer is made to direct the respondents to assign the seniority to the petitioner in the cadre of Instructor on the basis of his continuous length of service. Third prayer is made to direct the respondent State to promote the petitioner to the higher posts of Supervisor and Foreman and / or any other higher posts to which he would be legally entitled on the basis of his revised seniority and on the basis of the deemed date of promotion in the cadre. In the fourth prayer the direction was prayed to be given to the respondents to fix the pay of the petitioner in accordance with the rules framed by the State Government and to pay the arrears. Fifth prayer relates to direction to the respondents to pay all arrears of salary and to grant all consequential benefits by fixation of pay, etc. to the petitioner. Last prayer is made for issuance of injunction restraining the respondents from acting upon the said seniority list of 17.6.1980 and further restraining the respondents from issuing any orders of promotion to the higher posts of Supervisors and Foreman pending hearing and final disposal of this petition.

#. This petition is contested by the respondent and detailed reply to the Special Civil Application is filed to which the petitioner has filed the rejoinder affidavit.

#. The learned counsel for the petitioner contended that the petitioner now only restricted his petition to the following grievances :-

- (1) For quashing and setting aside the seniority assigned to him in the seniority list dated 17.6.1980 of Instructors
- (2) for getting deemed date of promotion along with his juniors who came to be promoted on the basis of the corrected seniority of the petitioner.
- (3) As against failure on the part of the second respondent in not fixing the salary of the petitioner under the 1975 Pay Rules and for consequential benefits.

#. Heard learned counsel for the parties.

#. The challenge made to the seniority list of 1980 is not sustainable. This challenge of the petitioner suffers from gross delay, laches and acquiescence. He joined the post of Craft Instructor in ITI with effect from 15.6.64 and his seniority in this cadre was given from this date. The petitioner has not made any grievance against his this appointment for all these years i.e. till he filed this petition. The petitioner has accepted this appointment and now at this belated stage this challenge cannot be permitted. A provisional seniority list of the Craft Instructor in the ITIs was published on 26.5.1971, therein the position of the holders of the post was shown as 31.8.1970. In this seniority list the petitioner has been placed at Sr. No.112 and therein his date of appointment was shown as 15.6.64. Against this provisional list the petitioner made representation. However, no change has been made in his position in the final seniority list dated 24.4.1974. The petitioner has not challenged this final seniority list for all these years and it attained the finality. This final list has been accepted by the petitioner and any change therein in future for other persons, it will not give any cause to the petitioner to challenge the same. So far as the petitioner is concerned seniority in the cadre for Craft Instructor was crystallized under the final seniority list dated 24.4.1979 vis-a-vis the person who has been placed above him and at subsequent stage he cannot be allowed to reopen this issue. Otherwise, there will be no finality to the seniority list.

#. The respondents have given out the reasons for publication of seniority list with some changes and that will not give any cause to the petitioner to fall back on his claim and the cause which accrued to him on 15.6.1964 or in any circumstances and eventualities on 24.4.1974. It is the say of the respondents that 1974 seniority list of the Instructors in ITIs was prepared on the basis of the date of completion of the craftsmanship training course after having joined as Craft Instructors. Some of the Instructors had made a representation that the date of sending instructors for training was fortuitous and that seniority should be reckoned from the date of the entry in the cadre of the Craft Instructors and therefore the seniority list should be revised. That grievance of those persons was found favour with the respondents and accordingly in the year 1980 it is decided that the

seniority list of the Craft Instructor in ITIs should be fixed on the basis of the date of the appointment and not as per the date of the completion of the training and accordingly seniority list was published on 17.6.1980 in which the position of the petitioner has been shown as on 11.1.1969. The case of the petitioner does not fall under this criteria. It is not the case where the petitioner's seniority had been assigned earlier on the basis of the date of the completion of the Craftsman Training Course. The continuous length of service was taken to be criteria for fixing of seniority and that was the criteria adopted in the case of petitioner while framing seniority list in the year 1974. His date of continuation of service is taken from the date on which he has entered in the cadre. In view of these facts the grievance of the petitioner made that his seniority has to be assigned by taking his date of entry prior to 15.6.64 is not tenable and it cannot be accepted. The petitioner was not in the cadre of Craft Instructor in the ITI prior to 15.6.1964 and his claim regarding seniority made in the writ petition is not tenable.

#. So far as second grievance is concerned, when the first grievance is not acceptable it cannot be accepted. So far as grievance of the petitioner against the respondent of non fixing of his pay in the revised pay scale is concerned it is suffice to say that it is also not tenable for the reason that no such prayer specifically is made in the prayer clause. Otherwise also this claim also suffers from inordinate delay and latches. From the reply to this Special Civil Application, I find that otherwise also no injustice is meted to the petitioner. The petitioner is transferred and appointed as Craft Instructor (Senior) at Industrial Training Centre, Rajkot under the order dated 1.6.64 in the scale of Rs.160-330 (Pre-revised) and his pay was fixed at Rs.160 p.m. w.e.f. 15.6.1964. The scale of Rs.160-330 was revised to Rs.205-405 under the provisions of G.C.S. (R.O.P.) Rules, 1961 w.e.f. 1.10.1961. Therefore, the pay of the petitioner was again refixed at Rs.205 in the scale aforesaid. The pay scale of the Craft Instructor (Senior) was revised from 205-405 to Rs.250-480 under the Revised Pay Scale rules, 1969 w.e.f. 1.6.67 and accordingly his pay was fixed at Rs.310/- p.m. w.e.f. 1.6.67 in the scale aforesaid. This fixation was made with the date of next increment 15.6.1967 subject to crossing of Efficiency Bar. Prior to appointment as Craft Instructor (Senior), the petitioner was drawing the pay in the pay scale of Rs.145-225 as Instructor in the Power Line Transmission. His pay on the post of Instructor Power Line Transmission and in the officiating

post of Craft Instructor (Senior) have been fixed, the details which have been given at page No.9 of the reply:-

Power line transmission Craft Instructor(Senior) in
Instructor in the Scale the scale of Rs.205-8-245-10-
of Rs.145-8-225 285-12-405 officiating pay
substantive pay

15.10.1964 209 15.6.1964 205
10.10.1965 217 15.6.1965 213
15.10.1966 225 15.6.1966 221 and so on

So, from this I find that the petitioner was
allowed to draw his substantive pay in pay scale of the
post of Instructor in Power Line Transmission.

#. Taking into consideration the totality of the facts
of this case, I do not find any merits in any of the
claim of the petitioner and the Special Civil Application
fails and the same is dismissed. Rule is discharged.
Interim relief, if any, granted stands vacated. No order
as to costs.

(S.K.Keshote, J.)

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